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DAWN MAKI

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re

MAKI, STEVE and CHRISTY
DAWN MAKI,

Debtors.

Chapter 11
Case No. 09-29876
DCN: AGT-4
Date: January 6, 2010
Time: 10:00 a.m.
Place: 501 I Street, Courtroom 35,
Dept. "C", 6th Floor
Sacramento, CA 95814

**MOTION FOR AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF DEBTOR IN POSSESSION'S MOTION
FOR ORDER APPROVING SALE OF REAL PROPERTY**

Debtors herein, hereby move this Court for an ORDER APPROVING SALE OF REAL
PROPERTY, and in support thereof, state as follows:

1. Debtor(s) filed the subject Chapter 11 on May 18, 2009.
2. Debtor(s) STEVE MAKI is the owner of certain real property located at 1516 Youngs
Avenue, Sacramento, CA 95838, hereinafter the "subject property."
3. The property is a single-family residence, located in Del Paso Heights, is in need of
remodeling, upgrading, permit approval. It is currently not occupied and not rentable.

1 4. The present fair market value is questionable, but estimated at \$50,000-\$55,000 in the
2 Debtors' Schedules.

3 5. Debtor desires to sell the property to S360, LLC, a California limited liability corporation,
4 for the total purchase price of \$53,000. Buyer will pay \$36,000 and assume approximately
5 \$23,000 in property tax delinquencies. Debtor seeks court approval to do so. The debtor is a real
6 estate investor and this might be considered ordinary court of business.

7 6. There exist at present time the following liens and encumbrances against the property as
8 follows: Property taxes and assessments per a Declaration of Substandard Building, totaling
9 approximately \$23,000 to be assumed by Buyer. Under the terms of the accepted counter-offer,
10 Buyer will pay \$38,000.00, cash, into escrow, and "assume all responsibility for any and all
11 standing liens."

12 7. The property has been listed for sale with Keller Williams Realty (Broker) pursuant to
13 agreement with the listing Broker for this property, debtors agreed to pay a commission of 6.0%
14 of the listing price (\$39,900.00) to Broker, equaling \$2,394.00.

15 8. From the proceeds of sale, the proceeds will be placed in the debtor in possession account,
16 to be utilized as the appropriate and customary and in the ordinary course, and to pay professional
17 fees.

18 9. It is believed that the sale of property is in the best interest of the estate and secured
19 creditors in order to pay claims and ameliorate cash flow.

20 **DISCUSSION/LEGAL ANALYSIS**

21 Bankruptcy Code §363 provides in pertinent part as follows:

22 "(b)(1) the trustee, after notice and a hearing, may use, sell, or
23 lease, other than in the ordinary course of business, property of the
estate...

24 (f) The trustee may sell property under section (b) or (c) of this
section free and clear of any interest in such property of an entity
25 other than the estate, only if

26 (1) applicable nonbankruptcy law permits sale of such property
free and clear of such interest;

27 (2) such entity consents;

(3) such interest is a lien and the price at which such property is to
be sold is greater than the aggregate value of all liens on such

property;
(4) such interest is a bona fide dispute; or
(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

In this case, the proposed sales price of the Youngs Avenue property is reasonable in light of the area, economy, and condition of the property.

There are no liens against the property, other than stated herein, for which Buyer will be responsible. The Debtor wishes to liquidate property to cover expenses of the estate and generate operating revenue. The Debtors believe this sale is in the ordinary course of business but because it is a substantial disposition of property wish to seek court approval prior to consummating any sale.

This sale is believed to be fair, just and equitable, in the best interests of the estate, the creditors, and the debtors in possession.

CONCLUSION

WHEREFORE, the Debtors pray for an Order Approving Sale of Real Property Free and Clear of Liens Pursuant to Bankruptcy Code Section 363(b) and (f) and providing for the payment or satisfaction of liens and costs consistent with the above.

Dated: December 22, 2009

MATHENY SEARS LINKERT & JAIME, LLP

By: 

ARISTIDES G. TZIKAS, ESQ., Attorneys
for Debtor